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ABSTRACT

An Employment and Housing Subcommittee hearing on home-based work focused on typically female clerical workers. The following women were found to face obstacles to conventional 9-to-5 jobs: women needing child care, displaced homemakers who lack job training and experience, rural women, disabled women, and older women who encounter job discrimination. Advantages to home-based employment included absence of transportation time and costs, saving on clothes, and flexibility of controlling one's hours and schedule. Problems were conflicts between child demands and employer deadlines and usual interruptions. Terms and conditions of employment included payment on a piecework basis, considerably less pay than office counterparts, no benefits, and no guaranteed or stable flow of work. Negative aspects of home-based work were misunderstanding and misuse of the concept of "independent contractor," shifting of costs from employers to employees, and no opportunity for career advancement. Recommendations were (1) protection of home-based workers through modifications in the Revenue Act of 1982, review of Internal Revenue Service and Employment Standards Administration enforcement programs, and employer compliance with legal definitions of employees and independent contractors; (2) dissemination of information to homeworkers regarding legal and financial differences between office and home-based clerical work; and (3) expanded child care services. (Some dissenting comments to the report are attached.) (YLB)

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HOME-BASED CLERICAL WORKERS: ARE THEY
VICTIMS OF EXPLOITATION?

THIRTY-NINTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
OPERATIONS

together with
ADDITIONAL VIEWS



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(II)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, July 16, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's thirty-ninth report to the 99th Congress. The committee's report is based on a study made by its Employment and Housing Subcommittee.

JACK BROOKS, *Chairman.*

(III)

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HOUSE OF REPRESENTATIVES

{ REPORT
99-677

HOME-BASED CLERICAL WORKERS: ARE THEY VICTIMS OF EXPLOITATION?

JULY 16, 1986.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations,
submitted the following

THIRTY-NINTH REPORT

together with

ADDITIONAL VIEWS

BASED ON A STUDY BY THE EMPLOYMENT AND HOUSING SUBCOMMITTEE

On June 24, 1986, the Committee on Government Operations approved and adopted a report entitled "Home-Based Clerical Workers: Are They Victims of Exploitation?" The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

The rapid increase in the number of women in the labor force—and especially the number of mothers of young children—is one of the most significant labor market developments of the post-war era in the United States. An integral aspect of this trend has been a move toward alternative work patterns. Part-time, part-year, flexible hours, job sharing and work at home are examples of such patterns, devised in part to help those who bear the major responsibilities for care of the home, children, invalids and the elderly to contribute to the support of their families. In our society today, these responsibilities continue to be carried mostly by women.

The Employment and Housing Subcommittee held a hearing on February 26, 1986, to explore the option of home-based work, limiting its concern to clerical work because it encompasses the largest group of female dominated occupations. The hearing focused on

clerical workers who work solely at home and who are *not* business owners or entrepreneurs, without regard to whether they use computers and modems, typewriters or pencil and paper. The distinction between independent contractors and employees proved to be critical. Additional investigation of some of the issues raised at the hearing supplemented the testimony.

II. BACKGROUND AND DISCUSSION

The Department of Labor reported that in March 1985 half of all mothers of children under age 3 were in the labor force, as were 60% of those with children 3 to 5,¹ 62,770,000. 62% of mothers with children under the age of 18 were in the labor force, compared with 45% in 1975. This upward trend is expected to continue for both married and single mothers.

A variety of obstacles impede many women's entry into the labor market. Foremost among them is the widespread shortage of adequate and affordable childcare services.

The increased aging of our population, with an ever larger number in the "old-old" category of people over 75 who will need help, will add to the demand for both flexible work patterns and better social institutions for care.

Other groups of women facing obstacles to finding or keeping conventional 9 to 5 jobs are: displaced homemakers who lack job training and experience; rural women who live far from employment opportunities; disabled women; older women who encounter age discrimination.

Some women in each of the above categories may find the opportunity to work to be the best possible solution. The obvious advantages are the absence of transportation time and costs, saving on clothes, and above all the flexibility of controlling one's hours and schedule. This flexibility or independence can facilitate child care and meeting other home and family responsibilities.

However, problems, often unforeseen by the workers, frequently counterbalance the anticipated benefits of home-based work. Infants' and children's schedules rarely mesh with employers' deadlines. The interruptions which characterize a homemaker's day conflict with efficient processing of an office workload. The trade-offs which are required of a home-based worker may well include greater costs than she may anticipate.

Both the positive and negative aspects were illustrated by the experience of a home-based secretary from Queens, New York. Mary Dworjan told the Subcommittee that, since her child was an infant, she has typed for a transcription service which delivers and picks up material on a daily basis. She also reported that she received no vacation or sick leave and depended on her husband's health insurance coverage. She rents her typewriter from the company for \$32.50 every two weeks.

She was grateful for a job which allows her to remain with her child but has found that it was not possible for her to get work done while he was awake and at home. Accordingly, in order to meet the stringent deadlines placed on her, she had to work very

¹ Bureau of Labor Statistics Current Population Survey, March 1985.

late hours and weekends, thereby experiencing more pressure than in her former office job.

Dr. Kathleen Christensen, director of the Project on Home-based Work at the City University of New York Graduate Center, testified about her survey questionnaire of some 14,000 homeworkers,² with follow-up interviews of 75 homeworkers. She confirmed that a wish to take care of their families motivated a majority to undertake work at home, but they found that the demands of infants and children rarely permitted them to do clerical work when the Children were awake. Generally the professional women, who could afford it, hired help; however, clerical workers typically had to rely more on family members or early morning and late night hours to accomplish their work.

Dr. Christensen explained that in her survey she found only one quarter of the clerical homeworkers used computer equipment. Based on the 1980 census, she estimated that there are about 181,000 clerical homeworkers. Estimates of home-based clericals using electronic equipment range from 10,000 to 30,000 (with perhaps 3,000-5,000 working for outside employers)³ while forecasts range as high as 10 million by the early 1990's. Unpublished data provided by the Census Bureau indicate only 7,829 typists, secretaries and stenographers worked at home for private companies in 1980. Data were not available on other clerical occupations of home-based workers.⁴ The Bureau of Labor Statistics reported that a special tabulation will soon be available which will shed additional light on the number of clerical homeworkers.⁵

Far more significant than the types of equipment used are the terms and conditions of employment. Most homeworkers are paid on a piecework basis, whether measured by pages typed, claims processed or computer strokes recorded. And most homeworkers are paid considerably less than their office counterparts, due largely to the fact that they are not paid for such necessary activities as setting up, correcting, printing, collating, etc.—and certainly not for the time spent in social interaction—which are paid for in an office setting. Another major factor is the absence of benefits, such as health insurance, vacation and sick leave, pensions, and Social Security contributions, which in toto can constitute as much as 30% of payroll. Furthermore, homeworkers rarely have a guaranteed or stable flow of work and thus do not have a dependable flow of income.

Clerical homeworkers are frequently labelled "independent contractors" by their employers, whether they transfer from on-site status or are hired initially to work at home. All of the witnesses at the hearing were of the view that this description is in most cases inaccurate and confusing. Most of these "contractors" are not in an independent position, even though there are some genuinely

² The questionnaire was published in Family Circle magazine; the responders were therefore self-selected and not a random sample, although the demographic composition of the group was similar to that of clerical homeworkers generally, Tr. p. 35 (Tr. refers to the printed record of the February 26, 1986 hearing.)

³ Office of Technology Assessment (OTA), *Automation of America's Offices*, pp. 192-3, December 1985.

⁴ Letter to Rep. Frank from John G. Keane, Director, Bureau of the Census, April 16, 1986.

⁵ Letter to Rep. Frank from Janet L. Norwood, Commissioner of Labor Statistics, April 2, 1986.

independent entrepreneurs who perform clerical work as their business service. The women in question usually work solely for one employer, who sets the rates of pay, workload schedule and deadlines, specifications for performance, and may lend or rent the necessary equipment to the worker. However, the employer, by calling these workers "independent contractors," relieves itself of the expenses of benefits, FICA, workers compensation, unemployment insurance, income tax withholding, etc.

The crucial distinction between "employee" and "independent contractor" was underscored for the Committee by a witness' report of a pending lawsuit against an insurance company by eight women who suffered because of their transfer from on-site employee to home-based contractor status.

Ms. Dworjan testified as to her confusion about the significance of the "contractor" status she assumed when she was employed by the transcription service. It was only at income tax preparation time that she learned that she had to pay 11% of her earnings as Self-Employment tax.

Subsequent to the hearing the Subcommittee asked the Internal Revenue Service to provide additional information concerning the law and regulations governing definitions of "employee" and the tax consequences thereof. IRS stated: "Generally, a worker is an employee for federal employment tax purposes if the worker has the status of an employee under the usual common law rules applicable in determining an employer-employee relationship."⁶ However, even when IRS finds that an employer has improperly treated workers as non-employees, Section 530 of the Revenue Act of 1978, as amended by the Tax Equity and Fiscal Responsibility Act of 1982, permits continuation of such treatment if the employer had a "reasonable basis" for that treatment. "Reasonable basis" is liberally defined (as directed by a Congressional report)⁷ including several "safe havens" and a catchall provision. If the employer meets the broad test of Section 530, it is relieved of the obligation to collect and pay Federal employment taxes, retroactively, prospectively, and in the future for both current and subsequently hired workers. Companies entering an industry where such treatment of employees is a "long-standing recognized practice of a significant segment of the industry . . ."⁸ may also be exempt from employment taxes.

On the other hand, a worker who is determined to be an employee of such an employer is required to pay only the employee share of the FICA tax, rather than the higher Self-Employment tax.

Apparently the IRS does not inform workers who it determines to be employees, whether or not the employer is relieved of taxes under Section 530. Employees' status and obligations are not changed because of the employer's exemption, but if they previously had been called independent contractors, they might be unaware of their eligibility for unemployment insurance or for the lower FICA tax.

⁶ Letter to Rep. Frank from Ronald Moore, Chief, Individual Income Tax Branch, April 15, 1986.

⁷ H.R. Rep. 95-1748, 96th Cong., 2nd. Sess. 5(1978) 1978-3 (Vol. 1) C.B.629, 633, per Rev. Proc. 85-18, Section 33.01(c).

⁸ Rev. Proc. 85-18 Sec. 3.01(c).

If an improper classification of workers is found, IRS may review prior years' tax returns for similar violations, if they are still open. However, such a finding does not trigger an automatic review in subsequent years.

The IRS stated: "With regard to the Internal Revenue Service's policy and enforcement programs, we can assure you that all available resources are applied in enforcing the code and regulations. We share your concern that in many situations, workers are not being properly classified for federal employment tax purposes, i.e., they are improperly classified as independent contractors . . ." (Ibid., p. 1-2.)

No information is currently available from IRS as to the amount of money or the number of workers affected by this law. Plans are underway for a three-part study of the problem to be completed in 1988.

Witnesses testified to uncertainties concerning IRS rules covering the deductibility of expenses associated with homework—utilities, home maintenance, mortgage payments, etc.

Other negative aspects of home-based work were highlighted by the Service Employees International Union which views homework as a means of shifting costs from employers to employees, while homeworkers lack the potential for promotion, training and career advancement which is available to on-site workers. The union stressed the need for expanded childcare services, saying: "Without access to affordable, quality care, many women may continue to view homework not as a choice, but as the only solution to dual family and work responsibilities." (Tr. p. 96.)

On the other hand, a management consultant and expert on telecommuting listed several advantages homework offers to employers without parallel disadvantages for employees: one, the ability to recruit people unable to work at an office such as the severely disabled; two, an ability to retain valued employees who would otherwise have to resign (although this is more likely to pertain to professional than to clerical workers); three, a chance to avoid or postpone expansion of office space and equipment; and four, the ability to better balance workload against computer availability. He added: "But employers must realize that they shouldn't expect to get something for nothing. Specifically, clerical employees working more hours at home must be paid for those hours. Employers who look to telecommuting to give them all of the benefits with none of the costs are taking a terribly shortsighted view." (Tr. p. 66.)

Subsequent to the hearing, the Committee asked the Labor Department's Employment Standards Administration (ESA) to provide information concerning enforcement of the Fair Labor Standards Act (FLSA) with respect to homeworkers. After describing the FLSA criteria for employees, ESA stated: "Generally, the Department has found that homeworkers, when measured against the foregoing criteria, do not meet the definition of 'independent contractors.'"⁹ Homeworker-employees are subject to the minimum wage, overtime, and child labor provisions of the Act and are required to maintain homeworker handbooks supplied by

⁹ Letter to Rep. Frank from Susan R. Meisinger, Deputy Undersecretary for Employment Standards, May 9, 1986.

their employers. In 1981 the Department began "... a concentrated enforcement program focused on employers of homeworkers ... including those involving home-based clerical work." They described an "active effort to seek out home-based clerical workers." (Ibid.) They reported for Fiscal Years 1983, 1984 and 1985 a combined total of 1,025 homework investigations, 119 (11.6%) of which involved clerical workers. Out of the total of 203,292 FLSA investigations in these years, the homework figure is one-half percent (0.5%); the clerical figure is 0.06%. Of the clerical investigations, 50% revealed monetary violations, 18% had minimum wage and 39% had overtime violations. There were no data on misclassification of employees as contractors.

III. FINDING

Viewed from the perspective of employers, employees and society, home-based clerical work presents both positive and negative aspects. Much more can and should be done by Federal officials to diminish the negative aspects. The fabric of protective legislation which has been developed to assist American workers should not be withheld from those who choose or are compelled to give priority attention to family obligations.

1. Misunderstanding and misuse of the concept of "independent contractor" is widespread in conjunction with home-based clerical work. Employers have a financial incentive to choose to designate their home-based workers as "independent contractors" so as to avoid many obligations and expenses. The workers thus lose benefits and protections to which they would normally be entitled, regardless of whether they are working in an office or in their homes.

Congress facilitated employers' avoidance of employment taxes when it extended Section 530 of the Revenue of 1978 which permits an employer who had a reasonable basis for treating workers as independent contractors, to continue to treat its worker as independent contractors for tax purposes, even after IRS determines that they are employees.

To the extent that employers avoid the costs associated with employment of labor, in effect they shift such costs to employees, and when the latter cannot provide for themselves, the burdens are shifted to society.

The Social Security Trust Fund loses money when employees are misclassified as contractors because under Section 530 employers may be exempted from their FICA payments, while employees pay their FICA tax (7.15% in 1986) rather than the Self Employment tax of 12.3%.

2. A critical shortage of affordable, accessible, quality childcare services is forcing many women into home-based work, many aspects which are unsatisfactory and inequitable. However, home-based work is not an ideal solution to the dual problem of childcare and need for income. Lack of other forms of supportive service such as daycare for infirm elderly or invalids increases the pressure on women to accept homework as a "better than nothing" choice.

3. The Internal Revenue Service has failed to notify workers in cases where employers have found to have improperly classified these workers for Federal employment tax purposes.

4. At the present time, despite a reported "active enforcement program," the Employment Standards Administration of the Labor Department is giving insufficient emphasis to enforcement of the Fair Labor Standards Act in relation to homebased clerical employees. Available data indicate that the enhanced enforcement efforts have not yet borne fruit. A high rate of violations found among the investigations which are made shows the need for a more effective program.

Home-based workers are not compensated for many work-related tasks, such as setting up equipment, collating, printing or even proofreading and correcting their work, all of which would fall within regular on-site work hours. Therefore their actual hours of work are extended and effective rates of pay reduced, quite possibly below the minimum wage. When they are compelled to rent equipment from their employer or pay for extra phone lines, their net compensation is further reduced.

The intermittent nature of much home-based clerical work (affected by family activities and needs), combined with such workers' natural unwillingness to jeopardize their income by "making waves" for their employer, makes accurate recordkeeping—and therefore FLSA enforcement—difficult but all the more important.

5. Clerical homeworkers often suffer from low and undependable income because employers may use them irregularly for peak workloads. The choice to work on a flexible schedule is illusory when workers must meet rigid deadlines or fit in with a computer's timetable.

6. Clerical homeworkers often suffer from isolation and loss of opportunities for career advancement by missing out on training, on the benefits of networking, and by their invisibility when promotions are considered, even if they are classified as employees and not "independent contractors."

7. Homeworkers may be aware of some trade-offs they make, such as accepting lower wages, loss of health and pension coverage, and lack of vacation and sick leave, in exchange for the chance to remain at home and earn some income. But they may not realize other drawbacks, such as their having to pay Self-Employment instead of lower FICA taxes, if they are bona fide contractors, having no income tax withholding, the lack of coverage by workers compensation and unemployment insurance to help in periods of no work, and the absence of protection against discrimination based on race, sex, religion, handicap or age. They may not be aware or adequately informed about their right to deduct from their income taxes the expenses associated with working at home.

8. Problems arise from differing definitions of "employee" and "independent contractor." The Internal Revenue Service (IRS) and the Fair Labor Standards Administration (FLSA) apparently do not use identical definitions. States and programs within state governments may also differ. Such differences are likely to complicate enforcement of various laws which affect home-based workers.

9. There is a serious lack of data concerning current and projected numbers of clerical homeworkers. It is important that this infor-

mation gap be filled, with data on both high technology and other types of workers, as a basis for appropriate public policies.

10. The potential and even the known dangers of exploitation of the vulnerable group of clerical homeworkers are not sufficient to justify a total ban on home office work. The mixed blessing which homework provides for thousands of women at some stages of their lives is a legitimate option, but one which requires protection through legislation, enforcement programs and enlightened employer attitudes and practices.

IV. RECOMMENDATIONS

1. The very broad "safe haven" provisions in Section 530 of the Revenue Act of 1982, which permit most employers to qualify as having a "reasonable basis" for treating employees as contractors for employment tax purposes, should be modified. After IRS determines that workers are in fact employees and not contractors, employers should henceforth be required to comply with employment tax requirements. The interpretation (based on H.R. Report 95-1748) whereby employers entering an industry, a significant segment of which has had a practice of treating workers as contractors, may claim the safe haven protection should be eliminated in order not to expand this practice.

2. The Internal Revenue Service and the Employment Standards Administration should review their enforcement programs and improve their coordination in the protection of home-based workers. Specifically:

(a) IRS should notify the employees who are found by IRS to have been misclassified as independent contractors, and provide information about the tax implications of such findings.

(b) IRS should automatically notify the Employment Standards Administration of the Department of Labor of all cases of misclassification, including data on both employers and employees.

(c) IRS should expedite its proposed study of this question, including the effect of Section 530 on employers, workers and the government, and make its findings available to Congress at the earliest possible date.

(d) The Employment Standards Administration of the Department of Labor should markedly improve its enforcement of the Fair Labor Standards Act in regard to home-based clerical workers. IRS data should be utilized in this process. Consideration should be given to publicizing cases of misclassification of employees as contractors so that both the workers in question and other workers and employers in similar situations can be alerted. This would be comparable to the practice of listing weekly in newspapers the food establishments which have been closed or suspended by health authorities.

(e) IRS and ESA should study the question of different definitions of "employee" and "contractor" and recommend appropriate statutory or regulatory changes to eliminate problems caused by discrepancies.

(f) IRS and ESA should provide information about cases of misclassification of employees as contractors to relevant state

agencies, such as labor and revenue departments, so that they can assure that such employees are properly covered under their statutes and regulations.

(g) The Equal Employment Opportunity Commission should make sure that homeworkers are included in the EEO-1 reports submitted by employers on their work force, in order to increase the likelihood that any patterns or practices of discrimination on grounds of race, sex, religion or age will be detected.

3. Employers should comply with legal definitions of "employee" and "independent contractor" and follow requirements for treatment of their employees at home as well as on-site and without regard to whether they are paid on a piece-rate basis. Business and management associations should disseminate information on this subject.

4. Employers, unions, women's organizations and public and private employment agencies should undertake efforts to inform current and potential homeworkers about all of the legal and financial differences between office and home-based clerical work. There should be no misinterpretation of the status of "independent contractor," since home-based work may be performed as either an employee or contractor. Clear and comprehensible written materials should be provided to employees, including specifics about where and how workers may obtain information and file complaints if necessary.

5. The data on homeworkers which are soon to be available from the Bureau of Labor Statistics' Current Population Survey, together with Census data, should be utilized in research which will undergird public policies at Federal and state levels. Such analyses should be widely disseminated. Future data collection should be planned so that trends can be identified.

6. Child care services must be greatly expanded so that women may make free and unforced choices as to whether, when and under what terms they will work at home. Women should not continue to be compelled to struggle with individual solutions to the major societal problem of child care.

V. CONCLUSIONS

Home-based clerical work offers benefits to society, workers and employers, provided that adequate protection and support are available. Exploitation of these workers often results from their being wrongly classified as "independent contractors" when they are, in fact and by law, "employees." For many women home-based work is a desirable choice; for others it represents a better-than-no-work option. All home-based workers are entitled to full protection of the laws which cover on-site workers. They must not be invisible cogs but equitably treated members of the labor force. Federal and state government agencies, employers and community organizations should share in meeting this goal.

ADDITIONAL VIEWS OF HON. RICHARD K. ARMEY, HON.
LARRY E. CRAIG, HON. THOMAS D. DELAY, AND HON.
BEAU BOULTER

We submit these separate views because we are concerned with the trust and the tone of the Report adopted by the Committee and because we find some of the Report's recommendations out of step with reality.

The Report accurately depicts the changing work environment in America. Embraced both by employer and employees, part-time, flex-time, and homework are but a few of the alternative work arrangements that allow people the freedom to tailor their work-effort and work-place to their individual needs. Yet, we are led to believe that the benefits of homework barely offset the potential for exploitation.

The Report by implication ascribes to homeworkers characteristics which we refuse to concede. Are workers who choose to work at home so ignorant or misinformed that they don't know when they are being exploited? We respectfully suggest that homeworkers are probably more familiar with the trade-offs associated with homework than the Report suggests.

The Report finds that homework is not an ideal solution to the dual problems of childcare and need for income. We feel compelled to point out that "ideal" solutions are seldom available to us in today's world. Life is full of trade-offs; employment destiny is no exception. This is the beauty of homework. By allowing people the freedom to decide what kind and where they will work, they're free to pursue employment most suitable for them.

The Report also "finds" that the lack of support services (daycare for infirms or elderly or childcare) may force some to accept homework as their only alternative. It is in fact unfortunate that economic realities force us to make tough decisions. But we don't believe the federal government should assume these new responsibilities.

We also believe the Committee errs in its tacit endorsement of nationalized childcare. And that is the only way we can construe Recommendation Number 6, which says:

Childcare services must be greatly expanded so that women may make free and unforced choices as to whether, when and under what terms they will work at home. Women should not continue to be compelled to struggle with individual solutions to the major societal problem of childcare.

First of all, let's be clear about what is a societal problem and what is the responsibility facing parents. Sure, in today's world it's tough to raise a family. In fact, raising children and guiding them into adulthood has always been a challenge. This is true for two-

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parent families and especially true for single-parent families. But if parents should not be "compelled to struggle with individual solutions to the major societal problem of childcare," who should? Do the authors suggest the federal government should add childcare to its ever-growing list of responsibilities? Have we reached a point in our society that upon birth children become wards of the state?

This Report suggests that home-workers are somehow denied the full opportunity to choose their employment destiny, that they are prone to be exploited, and that they are not smart enough to decide what type of work environment is best for them.

All workers have rights which can and must be protected. The Report is helpful in pointing out some valuable suggestions as to how workers' rights might best be protected for homeworkers. But in looking to offer homeworkers the full protection of the law, we should not cast upon homework the impression that exploitation is prevalent. More importantly, we must resist the urge to try and "solve" at the federal level problems like childcare which face parents who work.

RICHARD K. ARMEY.

LARRY E. CRAIG.

THOMAS D. (TOM) DELAY.

BEAU BOULTER.